IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 7715 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SATISHKUMAR RASIKLAL DOCTOR - Appellant(s)
Versus
BALDEVBHAI CHHAGANBHAI THAKORE & 2 - Defendant(s)

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Appearance :
MS SM AHUJA with Ms PRAGYA A. Jha for Appellant(s) : 1,
RULE SERVED for Defendant(s) : 1 - 2.
MS MEGHA JANI with MR CHIRAYU MEHTA for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 18/08/2006
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.M.MEHTA)

Satishkumar Rasiklal Doctor, original claimant, has filed this appeal under Section 173 of the Motor Vehicles Act against the judgment and award dated 13.7.1999 passed by the Motor Accident Claims Tribunal, Ahmedabad in MAC Petition No. 59 of 1994. The learned Judge by the impugned award has directed the driver, owner and Insurance Company of Fiat car No. GJ-1K-1160 jointly and severally to pay the claimant Rs.24,000/- with interest at the rate of 12% per annum from the date of the petition till realization, within one month from the date of the order, failing which the interest shall be charged at the rate of 15% per annum thereafter.

2. In the claim petition before the Tribunal, it was the case of the applicant that on 19.10.1993 at about 12.15 PM the applicant was going on his scooter towards his house situated in Adarsh Society, Near Swastik Cross Roads, Navrangpura, Ahmedabad and when the applicant was taking turn near Bhagvati Chambers, opponent No.1 while driving his Fiat Car overtook his scooter from left side and suddenly stopped his car and opened the door of the driver's seat. As a result thereof, the said door of the car dashed with the scooter of the applicant and hence the applicant fell down on the road and sustained serious injuries. According to the applicant, he sustained injuries because of rash and negligent driving by opponent No. 1 and, therefore, the applicant prayed for compensation of Rs.2 lakhs.

2.1 Though opponent Nos. 1 and 2 were duly served, they did not remain present before the Tribunal. Opponent No.3 – Insurance Company had resisted the application by filing reply at Exh. 19 wherein the Insurance Company generally denied the allegations made in the application, but admitted that the offending Fiat Car was insured with opponent No.3 – Insurance Company.

3. After going through the documentary and oral evidence the Tribunal came to the conclusion that the applicant had proved that the applicant sustained injuries because of rash and negligent driving by opponent No.1 while driving the Fiat Car. As regards the compensation, in all the Tribunal awarded Rs.24,000/- as damages under the following heads:-

Rs.10,000/-	towards pain, shock and suffering;
Rs.10,000/-	towards loss of amenities of life
Rs.01,000/-	towards medical expenses,
Rs.01,000/-	towards transportation charges,
Rs.02,000/-	towards special diet and other misc. expenses and
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Rs.24,000/-	
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3.1 The Tribunal also held that in this case as the doctor's fees and other medical expenses of which original papers were produced before the Insurance Company and as the applicant had also taken insurance

of personal accident and the Insurance Company had reimbursed Rs.11,000/- to the applicant towards the medical expenses, the applicant would not be entitled to any amount. The Tribunal further held that at the time of accident the applicant was earning Rs.5500/- somewhere in 1993 whereas at the time of his retirement in the year 1998, his pay had increased to Rs.11,000/-. Thus, the Tribunal observed that there was nothing on record to suggest that the physical disability, as suggested by the learned advocate for the applicant, had in any way affected the earning capacity of the applicant. On the contrary, from the oral evidence of the applicant, it transpired that the applicant had continued in service and retired in normal course and his pay had become almost double after the accident. Hence, the applicant was not entitled to any amount under the head of future economic loss.

Being aggrieved by the award, the original claimant has filed this appeal.

4. Ms Sunita Ahuja with Ms Pragya A Jha for the appellant – claimant has made the following submissions :-

4.1 The personal accident policy under which the appellant received Rs.11,000/- was taken out by the appellant by paying premium from his own pocket and the Tribunal erred in disallowing the claim of Rs.11,000/- for medical expenses on the ground that

the amount was reimbursed by the Insurance Company under the said personal accident policy. To substantiate the same, strong reliance is placed on the decisions of the Apex Court and also of this Court.

4.2 The Tribunal also seriously erred in not awarding any compensation for loss of future earning capacity. Relying on the decisions of this Court, it is submitted that merely because the claimant did not suffer any actual loss of salary or that there was any increase in the salary on account of the factors like pay revision or increments cannot be allowed to defeat the claimant's right to be compensated for the loss of future earning capacity. In any case, after the retirement, the appellant would have been able to secure some employment with a private establishment in view of his wide experience as X-Ray Technician at the Civil Hospital. However, on account of the permanent partial disability suffered by the appellant, he could not secure such employment.

4.3 The Tribunal also erred in awarding only Rs.10,000/- as compensation for pain, shock and suffering undergone by the appellant initially for three and a half months when the appellant had to remain on leave and even thereafter for the next five months when the appellant had to continue taking treatment by going to the Civil Hospital. Throughout this period, the appellant had to undergo pain, shock and suffering besides the loss of amenities of life

that the appellant has been suffering ever since the accident and even now.

4.4 The Tribunal erred in awarding the appellant compensation of only Rs.3,000/- towards transportation charges, special diet and other miscellaneous expenses although the appellant had to undergo prolonged treatment for almost nine months including hospitalization, the prolonged periods of rest, several visits to the Civil Hospital for medical treatment and physiotherapy treatment.

5. Before dealing with the above submissions, it is necessary to refer to the documentary evidence regarding injuries, treatment and disability-

5.1 Disability certificate dated 24.1.1995 was issued by Dr PM Vekaria at Exh.21/1. The doctor had examined the applicant and stated that the applicant had complaint of pain and stiffness of right knee joint, difficulty in squatting and sitting cross legged and climbing stairs, buckling of right knee joint off and on, feeling of insecurity and giving way and had to limp while walking and difficulty in walking on uneven surface. On clinical examination, the doctor opined that the applicant walks with a limp on right side, finds difficulty in squatting and sitting cross legged, and his right knee had healed scar of operation medial aspect of knee and lower thigh, tenderness under the scar, 15° flexion deformity to 150° flexion possible (left 170°) 20%

loss of mobility, no effusion in knee joint, mild laxity of medial collateral ligament, rotational test painful, 1” wasting of thigh muscles (girth of R-19”, L-20”), 30% loss of power of thigh muscles (power grade 3+) and the X-ray of right knee shows that there was no fracture, medial joint space open in valgus strait.

5.1A Thus, the doctor opined that there was permanent functional disability assessed at 20% of the body as a whole according to book of Kessler 1970.

5.2 The applicant also produced medical certificate dated 22.10.1993 at Exh.30 from Dr Dilip Patel which also opined that the applicant had the swelling knee mainly fluid, ATT movements PA NFUL, medical and psuteromed IAL instability conformed at G/A were produced. He also produced certificate from the doctor at Exh. 31 which opined that the applicant was suffering from LIGAMENTOUS INJURY KNEE RT; that the applicant went to the doctor on 1.12.1993 and he was operated on 19.10.1993 and thereafter he was advised rest from 2.12.1993 to 1.2.1994.

5.3 The applicant has also produced another medical certificate at Exh. 36 from Dr Dilip Patel which shows that the applicant was in the hospital from 18.10.1993 and discharged on 23.10.1993 and he was advised rest from 28.11.1993 to 28.12.1993. Certificates Exh. 38 and 39 show that the appellant

was advised rest upto 1.2.1994.

5.4 The applicant also produced certain medical bills to show that he had incurred medical expenses in this behalf.

5.5 The applicant also produced documentary evidence from the Civil Hospital, Institute of Cardiology & Research Centre, where he was serving, showing that the applicant had taken initially taken 45 days leave because of these injuries that the applicant had thereafter taken leave of 62 days i.e. from 2.12.1993 to 1.2.1994.

6. In his deposition at Exh.50 the applicant stated that the applicant was travelling on 18.10.1993 and the accident took place on that date. As the accident took place near his house, his wife came and ultimately initially he was taken to the hospital of Dr Dilip Patel and where he was operated on 23.10.1993 and he produced medical certificates which we have already referred to. The applicant stated that when the accident took place, he was drawing salary of Rs.5,500/- and when he retired in the year 1998, his salary was Rs.11,000/-. In support of the same, he has produced documentary evidence at Exhs. 33, 34 and 35. He has also relied upon the salary certificate at Exh. 33 issued by the Institute of Cardiology where he was serving which shows the applicant's salary as Rs.5,337/- at the time of the accident i.e. October 1993. Exh. 34 is a copy of pay slip regarding salary of November 1993

given to the applicant showing salary at Rs.5,287/- by Institute of Cardiology, Civil Hospital, Ahmedabad. At the time of retirement in February, 1998, he was drawing Rs.11,014/- (Exh.35). There was no dispute about the fact that the applicant was born on 6.2.1940 and was accordingly about 53 years of age on the date of the accident and that the applicant retired from service upon completing 58 years of age on 28.2.1998.

Medical Expenses

7. The learned advocate for the appellant has submitted that the finding of the Tribunal that as the Insurance Company had reimbursed the applicant an amount of Rs.11,000/- and, therefore, the Tribunal has declined to grant the said amount of compensation which is clearly illegal and erroneous in the eye of law.

8. From the judgment, it appears that the Tribunal has relied upon the judgment of the Division Bench of this Court in Mohanbhai Gemabhai vs. Balubhai Savjibhai, reported in 1994 ACJ 260 wherein it has been stated that the Tribunal should award just compensation. However, the said decision of the Division Bench does not deal with the question which was raised in the present claim petition.

9. We will now refer to the decisions on the question whether the claimant can be denied

compensation for medical expenses and treatment on the ground that such expenses and treatment charges were reimbursed to him under a policy of insurance for which the claimant had already paid the premium.

9.1 In Helen C. Rebellow vs. Maharashtra State Road Transport Corporation, 1999 ACJ 10 (para 37) the Apex Court held as under:-

> "37. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy amount is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which insured contributes in the form of premium. It is receivable even by the insured, if he lives till maturity after paying all the premiums, in the case of death insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on insured's death. Death is only

> a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc., though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on similar and same plane having nexus inter se between them and not to which, there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."
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> [emphasis supplied]

9.2 The aforesaid view has been reiterated in United India Insurance Co. Ltd. vs. Patricia Jean Mahajan, reported in (2002) 6 SCC 281:-

> "36. We are in full agreement with the observations made in the case of Helen

> Rebello that the principle of balancing between losses and gains, by reason of death, to arrive at the amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have some correlation with the accidental death by reason of which alone the claimants have received the amounts. ... ...
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> 37. We therefore, do not allow any deduction as pressed by the Insurance Company on account of receipts of insurance policy and social security benefits received by the claimants."

9.3 At this stage, it will not be out of place to record that as far as this Court is concerned, a Division Bench of this Court had also enunciated this principle as far back as in the year 1972 in Life Insurance Corporation of India vs. Heirs & Legal Representatives of Decd. Naranbhai Munjabhai Vadhia, reported in (1972) 13 GLR 920 in the following terms:-

> "13. Coming now to the question of damages, we have already settled the question as to what is collateral benefit in First Appeal Nos. 159-160 of 1968 decided on November 3, 1971. We have pointed out the legal position as enunciated in the latest decision by the House of Lords in Parry vs. Cleaver, 1969 (1) AER 555, where it was accepted as a settled principle of common law, which was followed not only in England but in all other common law jurisdiction after Bradburn's case 1874-80 All.E.R. Reprint 195, that insurance policy amounts were collateral benefits which the deceased

had bought with his own money. It was a benefit derived by way of prudent savings effected for his own benefit under a contract by the injured party whose benefit could never go to the tortfeasor. It is only a like which can be deducted from the like and, therefore intrinsic nature of the payment must be considered before any such deductions can be made. That is why any pension amount or retirement-cum-gratuity benefit which had the insurance element could never be deducted. It was only that pension which was earned after the contributions had ceased that it assumed the character of wages and which alone could be deducted, when computing the economic loss of future earnings or loss of wages. Therefore, in view of that settled legal position, the learned Tribunal was obviously wrong in excluding the amount of Rs.2000/- of insurance money and of Rs.1344/- the amount of death-cum-retirement gratuity which were of the same character as insurance money. These collateral benefits could not be deducted from the compensation amount."

9.4 The aforesaid view was reiterated by another Division Bench in the case of Amthiben Maganlal wd/o. Maganlal Pranlal Mistry vs. Superintendent, Geophysicist, ONGC, reported in 17 GLR 910 in the following words :-

"18. Something was urged on the ground that from the insurance the family had received a sum of Rs.61000/- but evidence was that Rs.11000 was by way of paid up policy and the rest was insured amount where only one premium was paid by the deceased. Even in this connection the legal position is well settled after our aforesaid decision in LIC vs. LR of the deceased Naranbhai, 12 GLR 920

> at page 937. We have already settled this question by holding that it was a collateral benefit in First Appeal Nos. 159-160 of 1968 decided on November 3, 1971 (Jaipur Golden Transport & Co. Ltd. vs. Keshavlal Mangalal & Ors.). There the entire legal position is considered as enunciated in the latest decision by the House of Lords in Parry v. Cleaver, 1969 (1) A.E.R. 535, where it was accepted as a settled principle of common law, which was followed not only in England but in all other common law jurisdiction after Bradburn's case 1874-80 All.E.R. Reprint 195, that the insurance policy amounts were collateral benefits which the deceased had bought with his own money. It was a benefit derived by way of prudent savings effected for his own benefit under a contract by the injured party whose benefit could never go to the tort-feasor. It was only a like which can be deducted from the like and, therefore, intrinsic nature of the payment must be considered before any such deductions could be made. Therefore, this collateral benefit could never be deducted from the compensation amount as per the settled legal position."
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> (emphasis supplied)]

9.5 In Ramanlal Ranchhoddas Shah vs. Asthi Gustadji Rustomji & Others (decided on 12th April, 1978), 19 GLR 990 (para 16) also, the claimant had got reimbursement of medical expenses from the Insurance Company for which he had paid premium. A Division Bench of this Court again held as under :-

> "16. Again, this is not a case in which the claimant was entitled to free medical aid by virtue of his employment or some such consideration and that he has been

> reimbursed on such consideration. This is also not a case in which the Government or some such official agency under the scheme like the National Health Scheme of U.K. Provides free medical aid to the claimant, in which case, different considerations could possibly weigh, though we should not be taken to have expressed a considered opinion on the question. This is a case in which the claimant had joined a scheme of insurance by paying premium and therefore, benefits which he got were ones which he had obtained with his own money and these benefits could never go to a tort-feaser as per the ratio laid down in LIC vs. L.R. of deceased Naranbhai, 13 GLR 920, to which reference has already been made by the learned Judge in his judgment in para 14; and, in this view of the matter also, the appellant would be entitled to the said amount to the extent of Rs.6157-39 Ps."

9.6 The same Division Bench of this Court went a step further in Nirmaladevi Dilipkumar Gandhi vs. Gulamnabi Usmanbhai Shaikh (decided on 26/27 April 1978), 19 GLR 620 (624) and held as under :-

> ".... In other words, even if a claimant has received free medical service at his own residence or at the residence or private nursing home or clinic of a medical practitioner who is his friend or relative or from a private medical practitioner who is not thus connected with him but who has chosen to render free services for some other personal or social consideration, the claimant must still be compensated by estimating the fair and reasonable cost of supplying those services. The tortfeaser cannot benefit, under such circumstances, by escaping his liability to compensate the claimant on the ground that the medical

> services were tendered to him entirely free. The question from what source the claimant's needs have been met, the question who had given the services, the question whether the claimant was under a legal or moral liability to pay or reimburse the provider of services, are all irrelevant, so far as the tortfeasor is concerned. The claimant, when he recovers such damages, will hold them in trust for the person who rendered the services to him. In our opinion, therefore, the Tribunal's approach to the question of compensation under this sub-head is vitiated by an extraneous consideration and the same has consequently affected its award.
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> 13. We might make it clear that we are confining these observations to free medical services rendered to a claimant in circumstances such as those mentioned above. We do not wish to express any opinion on the question as to whether when free medical service is rendered to a claimant at a general public hospital, he would still be entitled to be compensated even though he was not required to pay for the treatment. Such a case is not before us and what we have said above should not be held to apply necessarily in such circumstances. We are making this reservation because the question of compensation in such a case is not free from doubt and even in England there appears prima facie to be some inconsistency in judicial approach on the question (see Daish vs. Wauton (1972) 2 QB 262 and Cunningham v. Harrison, (1973) 3 WLR 97)."

10. It is surprising that the Tribunal has not at all considered the above binding decisions of this Court and the decision of the Apex Court in Helen C. Rebellow (1999 ACJ 10) all of which were rendered

before the date of the award. As regards the deduction on account of insurance amount, the finding of the learned Judge cannot be accepted in view of the judgment of the Apex Court in Helen C. Rebello (Supra) and the four Division Bench judgments of this Court which were rendered more than twenty years before the award under challenge in this appeal. Hence, the deduction made by the Tribunal must be held to be contrary to the well settled legal position – settled in this State since 1972.

Compensation for Loss of Future Earning Capacity

11. We now turn to the question whether the applicant is entitled to any compensation for loss of future earning capacity. On the ground that when the accident took place, the applicant was earning Rs.5500/- and at the time of retirement he was earning Rs.11,000/- on account of pay revision, the learned Judge held that the physical disability had in no way affected the earning capacity of the applicant and on the contrary, the applicant had continued in service and retired in normal course and his pay had become almost double after the accident. For denying compensation on the above ground, the Tribunal relied upon the decision in Union of India vs. Asmathnarayan, reported in 1993 (1) GLH 1044 = 1993 (2) GCD 62 (Guj.). We have gone through the said judgment which lays down general principles for assessment of loss of earning capacity and particularly reiterates the principles laid down in

Babu Mansa vs. Ahmedabad Municipal corporation, 19 GLR 492 to the effect that loss of earning capacity is not always co-extensive with the extent of physical disability.

12. In our view, the decisions directly applicable to the facts of the present case are following two decisions -

12.1 In Ramanlal Ranchhoddas Shah vs. Asthi Gustadji Rustomji & Others, 19 GLR 990 (paras 27 to 29), this Court held that even if the claimant does not suffer any loss of income till his retirement on account of the good will of his employer allowing to continue him with the job, the claimant would have to be compensated for the adverse effect the disability will have on his work prospects after retirement.

12.2 In State of Gujarat vs. Somabhai Dhurabhai Sindhava, 34(2) GLR 1043, after the accident causing injuries resulting into permanent partial disability, a police constable was not only continued in employment but was also granted two promotions, besides the benefit of pay revision. This Court held that it can still be said that loss of earning capacity would materialize after retirement when in normal physical condition such employee would be expected to do some private work on re-employment or some security job and that such a loss can be assessed for a period of about 5 years after retirement.

13. In light of the above binding decisions of this Court, we find considerable substance in the submission of the learned advocate for the claimants that but for the permanent disability suffered by him, after retirement the claimant would have been able to secure employment with a private establishment in view of his wide experience as an X-ray Technician at the Civil Hospital. The applicant was serving in an organization which allowed him to work and at a higher salary in view of pay revision, but that did not mean that the accident did not diminish his earning capacity.

14. In view of the above settled principles, the finding of the Tribunal that because the applicant was earning Rs.5500/- and at the time of retirement he was earning Rs.11,000/- and, therefore, there is no loss of earning capacity is clearly unwarranted. The Tribunal ought to have considered the disability suffered by the applicant and the principles in this behalf.

15. In view of assessment of disability of the body as a whole at 20%, we assess the loss of future earning capacity at 20%, on a conservative estimate of the current income of the applicant on the date of the accident i.e. 20% of Rs.5,500/- = Rs.1100/- per month i.e. Rs.13,200/- per annum.

Applying the multiplier of five years as

done in Somabhai Sindhava case, 34(2) GLR 1043, the compensation for loss of future earning capacity works out to Rs.66,000/-.

Compensation for Pain, Shock and Suffering and Amenities of Life.

16. Coming to compensation for pain, shock and suffering and for loss of amenities of life, it is necessary to refer to the judgment of the Apex Court in Divisional Controller, KSRTC vs. Mahadeva Shetty, (2003) 7 SCC 197 wherein what is compensation has been explained by the Apex Court in the following words :-

> "10. The term "compensation" as stated in the Oxford Dictionary, signifies that which is given in recompense, an equivalent rendered. "Damages" on the other hand constitute the sum of money claimed or adjudged to be paid in compensation for loss or injury sustained, the value estimated in money, of something lost or withheld. The term "compensation" etymologically suggests the image of balancing one thing against another; its primary signification is equivalence, and the secondary and more common meaning is somethings given or obtained as an equivalent. Pecuniary damages are to be valued on the basis of "full compensation". That concept was first stated by Lord Blackburn in Livingstone vs. Rawyards Coal Co.
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> 16. This Court in R.D. Hattangadi vs. Pest Control (India) (P) Ltd., (1995) 1 SCC 551 laying the principles posited : (SCC p.556, para 9)
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> "9. Broadly speaking while fixing an amount

> of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant; (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."
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> 18. A person not only suffers injuries on account of accident but also suffers in mind and body on account of the accident throughout his life and a feeling is developed that he is no more a normal man and cannot enjoy the amenities of life as another normal person can. While fixing compensation for pain and suffering as also for loss of amenities of life, features like his age, marital status and unusual deprivation he has undertaken in his life have to be reckoned."

17. We have already referred to the disability certificate dated 24.1.1995 issued by Dr PM Vekaria

at Exh.21/1 and noted down the injuries suffered to the applicant in para 6 of our judgment earlier and also medical certificate Exh.36 from Dr Dilip Patel and other relevant medical certificates produced on record. We have also gone through the evidence of applicant at Exh.50. On the basis of the aforesaid evidence, the applicant had already established his case that applicant had to remain on leave for undergoing treatment for 3½ months before being in a position to resume work and thereafter also had to go to hospital for physiotherapy treatment for another five months. Besides, the applicant has difficulty in walking and squatting for the rest of his life and there is loss of amenities of life.

17.1 From the evidence on record, it is clear that on the date of accident (i.e. 19.10.1993), the applicant was 53 years old and ultimately he retired somewhere in 1998-99 at the age of 58 years. So since 1993 the applicant was walking with a limp and he had difficulty in squatting and sitting cross legged. In view of this it is established that applicant has suffered severe loss of amenities of life right from 1993 till 1998 and even thereafter today in 2006 i.e. for about 13 years. In view of this finding of fact, award of Rs.10,000/- for pain, shock and suffering is on the lower side.

17.2 In the facts and circumstances of the case, therefore, we award compensation of Rs.25,000.- for pain, shock and suffering and for loss of amenities

of life.

Compensation for Loss of Past Income

18. We also find that the Tribunal has not awarded any amount for loss of past income even through the applicant had to remain on leave for three and a half months. Here again, the tort feasor can not take the advantage of leave lying to the applicant's credit in the leave account. Hence, we award Rs.19,000/- under the said head.

Total Compensation

19. The appellant-claimant is accordingly entitled to the following amounts :-

(i)	Rs. 11,000/-	For medical expenses – which amount was erroneously deducted by the Tribunal on the ground of reimbursement by the Insurance Company.
(ii)	Rs. 66,000/-	For Loss of future earning capacity
(iii)	Rs. 25,000/-	For Pain, shock and suffering & loss of amenities of life;
(iv)	Rs. 19,000/-	For loss of past income for 3½ months

(v)	Rs. 9,000/-	Transportation charges, special diet and other Misc. expenses
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	Rs.1,30,000/-	Total
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20. In view of the above discussion, the appeal is partly allowed. The award dated 13.7.1999 of the Tribunal is modified and it is held that the respondents are jointly and severally liable to pay the appellant compensation of Rs.1,30,000/- with proportionate costs and with interest at the rate of 9% per annum. Since the Tribunal had awarded only Rs.24,000/- the Insurance Company will deposit the additional amount of Rs. 1,06,000/- (Rupees one lakh six thousand) with interest at the rate of 9% per annum on such amount from the date of the claim petition till realization and with proportionate costs within two months from the date of receipt of the certified copy of this judgment. After the amount is deposited, the Tribunal shall pass necessary orders for investment and disbursement.

20.1 The interest awarded by the Tribunal on the amount of Rs.24,000/- is not disturbed.

20.2 Direct Service is permitted on respondent No.3 – Insurance Company.

[M.S. SHAH, J.]

[K.M. MEHTA, J.]

sundar/-